

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 83 of 1981

with

CROSS OBJECTIONS

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LALITKUMAR CHHOTALAL SHETH

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR SURESH M SHAH for Appellant

MR JD AJMERA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/09/98

ORAL JUDGEMENT

1. The suit filed by the plaintiff-appellant for declaration and other relief regarding his termination of services by the respondent has been dismissed by both the courts below.

2. Learned counsel for the appellant raised manifold

contentions challenging the judgment of both the courts below.

3. Learned counsel for the respondent submitted that both the courts below have erred in deciding the issue regarding the jurisdiction of the court against the respondent.

4. Cross objections are filed by the respondent in which precisely this issue has been raised. Learned counsel for the respondent contended that this matter pertains to industrial dispute and though learned trial court and first appellate court accepted as a fact that the appellant is a 'workman' and Bank is an 'industry' still this issue regarding jurisdiction of the Civil Court to entertain the civil suit had illegally been decided against the respondent. It has further been contended that the appellant himself has considered it to be an industrial dispute and he approached the Assistant Labour Commissioner for the redressal of his grievance. Merely because in this case the said authority has decided the matter against him it does not confer any jurisdiction on the Civil court to entertain the suit. Lastly, it is contended that the plaintiff-appellant wanted to enforce his rights under the Industrial Disputes Act and only remedy available to him was by way of raising an industrial dispute. In support of this contention, learned counsel for the respondent placed reliance on the decision of the Apex Court in the case of Premier Automobiles Ltd. vs. Karllakar Shantaram Wade reported in AIR 1975 SC 2238 and the decision of this court in the case of Digvijay Cement Co. Ltd. vs. Chandravani J.S. reported in 1998 (2) G.L.H. 302.

5. On the other hand, learned counsel for the appellant contended that both the courts below have decided this issue concurrently against the defendant-respondent and this court sitting under section 100 of C.P.C. many not interfere with that part of the judgment. However, the learned counsel for the plaintiff-appellant does not dispute that before filing of the civil suit, the plaintiff-appellant has approached to the Assistant Labour Commissioner for redressal of his grievance and this approach by him to the said authority no doubt gives out that he wanted to enforce his rights under the Industrial Disputes Act, 1947.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. Learned counsel for the plaintiff-appellant does

not dispute that the plaintiff-appellant was a 'workman' and the defendant-respondent was an 'industry' at the relevant time and still it continues to be so. This matter pertains to the termination of services of a workman and the very fact that the plaintiff-appellant had approached to the Assistant Labour Commissioner by raising an industrial dispute, it is no more in dispute that he had gone there to enforce his rights under the Industrial Disputes Act, 1947. It is different matter that the said authority has not granted relief. Merely on this ground the plaintiff-appellant could not have approached the civil court and it will not confer any jurisdiction on the civil court. It cannot be said to be a relief prayed for by the plaintiff-appellant under the common law. This very conduct of the plaintiff-appellant to approach to the authorities under the Industrial Disputes Act, is conclusive proof of the fact that he has taken it to be a case of industrial dispute and he had gone there to enforce his rights under the provisions of Industrial Disputes Act, 1947. Even if the said authority has not given any relief to him, that was not the final and conclusive decision and he could have approached to the appropriate authority provided under the Industrial Disputes Act, 1947, which remedy was clearly available to him as it is apparent from the provisions as contained in section 2-A of the Industrial Disputes Act, 1947. As the matter before the civil court pertains to industrial dispute, the courts below have committed serious illegality in deciding the issue regarding jurisdiction of the civil court to try the suit against the defendant-respondent. It is a clear case of assumption of the jurisdiction by the civil court. This matter is squarely covered by the decision of the Apex Court on which reliance has been placed by the learned counsel for the defendant-respondent. As this appeal deserves to be dismissed only on this ground, it is not necessary to go on and examine and give findings on other contentions raised by the learned counsel for the plaintiff-appellant.

8. In the result, this second appeal fails and the same is dismissed.

zgs/-